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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/961,086

09/21/2001

Douglas D. Ross

A9118

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23373

7590

05/26/2006

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WASHINGTON, DC 20037

EXAMINER

UNGAR, SUSAN NMN

ART UNIT

PAPER NUMBER

1642

DATE MAILED: 05/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/961,086

Applicant(s)

ROSS ET AL.

Examiner

Susan Ungar

Art Unit

1642

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 08 May 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☒ The Notice of Appeal was filed on 08 May 2006. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

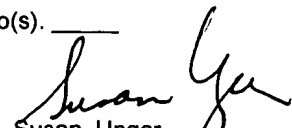
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: none.  
Claim(s) objected to: none.  
Claim(s) rejected: 5-7.  
Claim(s) withdrawn from consideration: none.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☒ Other: See Continuation Sheet.

  
Susan Ungar  
Primary Examiner  
Art Unit: 1642

Continuation of 3. NOTE: The newly added claims include claims drawn to pharmaceutical compositions and method claims not searched or considered in this case, all of which would require further search and consideration..

Continuation of 11. does NOT place the application in condition for allowance because: If the Amendment were to be entered, claims 5-7 would remain rejected under 35 USC 103 for the reasons previously set forth in the paper mailed November 8, 2005, Section 4, pages 2-7.

Applicant argues that no evidence has been presented that the particular species of antibodies recited in the pending claims would be included in the genus of antibodies that would result from the use of Purnelle or Kirby as immunogens. The argument has been considered but has not been found persuasive because, given the identity and the numerous stretches of amino acids in common or conservatively substituted, anyone of ordinary skill in the art would believe it to be more likely than not that antibodies to the polypeptides of Purnelle or Kirby would bind also to the instantly claimed SEQ ID NO:1.

Applicant argues that the given the teaching of Herbert that the three-dimensional structure of the epitope is essential for antibody binding, the skilled artisan would not expect that two polypeptides having only 30.5% and 32.1% identity to SEQ ID NO:1 would form identical antigenic determinants in the native folding of the proteins as those found in the polypeptide of SEQ ID NO:1. The argument has been considered but has not been found persuasive because Applicant is arguing limitations not recited in the claims as currently constituted. Nothing in the claims requires that the antibodies bind to the native conformation. In point of fact, antibodies that bind to the denatured form of a protein, for use, for example, in Western blotting, are conventional in the art.

Applicant argues that the skilled artisan would not expect antibodies raised against either the Purnelle or Kirby polypeptide to be cross-reactive with the polypeptide of SEQ ID NO:1 and points to the submitted Declaration. The argument has been considered but for the reasons set forth previously and above, the artisan would expect antibodies raised against either the Purnelle or Kirby polypeptide to be cross-reactive with the polypeptide of SEQ ID NO:1. Further, for the reasons set forth above, Examiner has not and will not consider the Declaration submitted after-final.

Applicant states that Examiner suggests that antibodies can be raised against peptides comprising five or more amino acids. It is noted that Applicant mischaracterizes Examiner. Examiner discussed the fact that five or more amino acids comprise an epitope but never suggested that antibodies be raised to a peptide consisting of five amino acids.

Applicant argues that the antibodies recited in claim 1 comprise a small number of species of the large genus of antibodies that might arise from the production of antibodies using fragments of the polypeptides of Purnelle and Kirby. The argument has been considered but has not been found persuasive since Examiner never suggested using fragments of the polypeptides of Purnelle and Kirby to produce antibodies.

Applicant reiterates arguments drawn to motivation to select specific antibodies. The argument has previously been considered and not found persuasive for the reasons of record.

Applicant reiterates arguments drawn to no suggestion or motivation to make the claimed invention. The arguments have previously been considered but have not been found persuasive for the reasons of record.

Applicant argues that antibodies to native proteins would not be expected to cross-react. The argument has been considered but has not been found persuasive for the reasons set forth above, that is, Applicant is arguing limitations not recited in the claims as currently constituted. Nothing in the claims requires that the antibodies bind to the native protein.

Applicant points to the submitted Declaration. However, for the reasons set forth above, Examiner has not and will not consider the Declaration submitted after-final.

Continuation of 13. Other: The drawings filed on September 21, 2001 are accepted by the Examiner.